

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

FILED  
FEB 3 2017  
U.S. District Court  
Clerk, U.S. District Court  
District of Montana  
Billings

FEDERAL NATIONAL MORTGAGE  
ASSOCIATION,

Plaintiff,

vs.

DANIEL L. STILL, JENNY STILL,  
and any person in possession,

Defendants.

CV 16-174-BLG-SPW

ORDER

Plaintiff removed this case on December 16, 2016. (Doc. 1). The Defendants filed a motion to remand on January 13, 2017. (Doc. 10). Plaintiff initially opposed the Defendants' motion to remand but has since conceded removal was improper. (Doc. 12). Plaintiff maintains, however, that they should not be liable for attorney's fees incurred by the Defendants due to the improper removal. Plaintiff argues it did not know removal was improper until the Defendants filed their motion to remand.

The standard for awarding fees for an improper removal is the reasonableness of the removal. *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005). Courts may award attorney's fees only when the removing party

lacked an objectively reasonable basis for seeking removal. *Martin*, 546 U.S. at 141 (citing 28 U.S.C. § 1447(c)). Here, Plaintiff has given no objectively reasonable basis for the removal. The proper course for removal is determining whether removal is proper before removing the case, not after. Plaintiff all but admits that, had it researched whether removal was proper based on the Defendants' counterclaim, it would have never removed the case. *See* (Doc. 12 at 2); *see also Westwood Apex v. Contreras*, 644 F.3d 799, 805 (9th Cir. 2011) (“[A] counterclaim defendant who is also a plaintiff to the original state action may not remove the case to federal court.”). Plaintiff is liable to the Defendants for their reasonable attorney’s fees caused by the improper removal because Plaintiff lacked an objectively reasonable basis for the removal. *Martin*, 546 U.S. at 141.

IT IS HEREBY ORDERED that Defendants’ Motion to Remand (Doc. 10) is GRANTED. This case is remanded to the Twenty-Second Judicial District Court for the State of Montana. The Clerk of Court shall transmit this file to the Carbon County Clerk of District Court.

IT IS FURTHER ORDERED that Defendants are awarded their reasonable attorney’s fees caused by the improper removal.

IT IS FURTHER ORDERED all other motions, deadlines, and scheduling conferences are VACATED.

DATED this 3<sup>rd</sup> day of February, 2017.

Susan P. Watters  
SUSAN P. WATTERS  
United States District Judge